



Competitive Carriers Association
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Competitive Carriers Association

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May 8, 2014

Via ECFS

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: EX PARTE NOTICE

Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions,

GN Docket No. 12-268

Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269

Dear Ms. Dortch:

Competitive Carriers Association (CCA) submits this letter to respond to claims made in recent notices of *ex parte* communications submitted by AT&T and Verizon. For the reasons set forth below, the Commission should reject their claims and adopt reasonable, well-crafted spectrum aggregation limits.

Legacy Spectrum Grants

AT&T recently acknowledged receiving substantial low-band spectrum resources from the Federal government without having paid for them.¹ In filings with the Securities and Exchange Commission, AT&T has established a book value of its spectrum resources of \$56.4 billion.² Notably, neither AT&T nor its predecessor companies paid U.S. taxpayers for between \$18-21 billion of low-band spectrum assets that AT&T holds, according to a new analysis by CCA.³

¹ See Letter from Wayne Watts, General Counsel, AT&T, to Marlene Dortch, Secretary, Federal Communications Commission, GN Docket No. 12-268 (May 2, 2014) ("AT&T Letter"); see also Letter from David L. Lawson, Counsel to AT&T, to Marlene Dortch, Secretary, Federal Communications Commission, GN Docket No. 12-268 (May 2, 2014).

² AT&T lists the current value of its licenses at \$56,433,000,000. AT&T Inc., Annual Report (Form 10-K), Exhibit 13, at 36 (Feb. 21, 2014).

³ See *infra* nn.8-11 and accompanying text.

When cellular licenses were first awarded, AT&T's predecessor companies received cost-free grants of low-band spectrum resources from the Federal Communications Commission.⁴ Low-band spectrum is unique and extraordinarily valuable because the signals travel greater distances, requiring fewer costly base stations and permitting far more cost-effective deployment in rural and suburban areas. Low-band signals also penetrate walls much more readily, allowing for superior indoor coverage in rural and urban areas alike. AT&T was not alone in enjoying taxpayer-funded government grants of valuable low-band spectrum; however, the collective subsidy that AT&T and Verizon received far outstrip anything received by other carriers.

AT&T has attempted, unconvincingly, to portray the amount of federal subsidy it enjoys as minimal. AT&T contends that various transactions that occurred since the government's spectrum handouts resulted in AT&T having paid fair market value for some of the low-band spectrum subsidies AT&T and its predecessor companies received. Additionally, AT&T claims that the original cost-free government grants of spectrum to AT&T's direct predecessor Southwestern Bell Telephone Company amount to "only" about 3% of AT&T's low-band spectrum holdings.⁵

Further, AT&T's claims about the cleansing effects of certain secondary market transactions are inconsistent. For example, AT&T contends that it acquired the "nearly 97%" of its low-band spectrum through auctions and secondary market transactions, but does not afford other carriers' secondary market transactions the same treatment.⁶ AT&T's inconsistent treatment of these secondary market transactions calls into question its contention that AT&T's spectrum subsidies are limited only to those enjoyed by one of its predecessor companies, Southwestern Bell Telephone Company.⁷

Even if AT&T consistently treated secondary market transactions as resulting in a payment of fair market value, the subsidy to AT&T's immediate predecessor company alone would still amount to nearly \$1.6 billion in taxpayer-funded spectrum grants. CCA calculated this figure using publicly available spectrum data⁸ and 2010 Census data⁹ to find the total MHz-POPs at the county level for each spectrum band held by AT&T. CCA then assigned a value per MHz-POP to each band such that the claimed book value of AT&T's total

⁴ These valuable grants of spectrum were lawful at the time because they preceded the adoption of legislation granting the FCC authority to establish a competitive bidding process for the award of spectrum licenses. *See* 47 U.S.C. § 309(j)(1).

⁵ AT&T claims that "nearly 97%" of its low-band spectrum was acquired at auction or in loosely defined secondary market transactions. AT&T Letter at 1-2.

⁶ *See* AT&T Letter at 2.

⁷ *See id.*

⁸ FCC, *Spectrum Dashboard*, available at <http://reboot.fcc.gov/reform/systems/spectrum-dashboard> (last accessed May 7, 2014).

⁹ Census Bureau, *2010 Census Data*, <http://www.census.gov/2010census/data/> (last accessed May 7, 2014).

spectrum portfolio was replicated.¹⁰ Through this process, CCA estimated the value of AT&T's low-band spectrum assets at \$42-\$48 billion.¹¹ Thus, even accepting AT&T's claim that it obtained "only about 3.3%" of its low-band spectrum for free from the government, a conservative estimate of the value of AT&T's government-subsidized spectrum grant is still approximately \$1.6 billion.

Spectrum Aggregation Limits

On April 30, 2014, Verizon submitted a notice of *ex parte* communications in the above referenced-dockets offering unsubstantiated claims of the supposed complexity of spectrum aggregation limits, and claims that Verizon's demonstrably smaller, less-capitalized competitors, which hold little to no low-band spectrum, lack a need for such limits.¹² Because spectrum aggregation limits would otherwise stand in the way of Verizon's ability to "run the table at the auction";¹³ it should come as no surprise that Verizon now tries to foment doubts about spectrum aggregation limits, despite their successful track record as discussed below.

Contrary to Verizon's unfounded claims that spectrum aggregation limits would somehow reduce bid amounts, CCA and its carrier members have demonstrated that spectrum aggregation limits boosted revenues in Canada's 700 MHz auction, just as they would in the U.S. wireless marketplace.¹⁴ The reason is clear: spectrum aggregation limits invite greater auction participation from more competitors, increasing bidding levels and amounts, while preventing dominant incumbents from winning all the spectrum.¹⁵ In the long term, spectrum aggregation limits will mean less consolidation of spectrum below 1 GHz – among

¹⁰ See *supra* at n.2.

¹¹ This includes Cellular spectrum at 850 MHz and 700 MHz. Valuing these bands between \$2.60 and \$3.00 per MHz-pop allowed CCA to match the publically reported book value of AT&T's entire spectrum portfolio without making unrealistic assumptions about the value of the PCS, AWS, and WCS bands.

¹² See Letter from Leora Hochstein, Executive Director for Federal Regulatory Affairs, Verizon, to Marlene Dortch, Secretary, Federal Communications Commission, GN Docket No. 12-268, WT Docket No. 12-269 (Apr. 30, 2014).

¹³ See Tom Wheeler, *Ensuring A Fair And Competitive Incentive Auction*, FCC Blog (Apr. 25, 2014), available at <http://www.fcc.gov/blog/ensuring-fair-and-competitive-incentive-auction>.

¹⁴ See Peter Cramton, *Lessons from the Canadian 700 MHz Auction* (Apr. 2014), attached to Letter from Trey Hanbury, Counsel to T-Mobile USA, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, GN Docket No. 12-268, WT Docket No. 12-269 (Apr. 3, 2014) ("Cramton Study"); Peter Cramton, *Auction Revenues and Competition Policy in the 600 MHz Auction 1* (May 8, 2014), attached to Letter from Competitive Carriers Association to Marlene H. Dortch, GN Docket No. 12-268, WT Docket No. 12-269 (May 8, 2014); see also Letter from Rebecca Murphy Thompson, General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary FCC, GN Docket No. 12-268, WT Docket No. 12-269 (Sept. 4, 2013).

¹⁵ See Cramton Study at 8.

the most valuable spectrum for mobile broadband services – and greater competition in the heavily concentrated U.S wireless marketplace. It will also mean faster deployment of higher speed mobile broadband services.

For the foregoing reasons, the Commission should continue towards adopting well-crafted spectrum aggregation limits in its rules for the 600 MHz incentive auction. This *ex parte* letter is being filed electronically with your office pursuant to Section 1.1206 of the Commission's Rules.

Sincerely,

/s/ Rebecca Murphy Thompson

Rebecca Murphy Thompson
General Counsel

cc: Erin McGrath
Brendan Carr
Renee Gregory
Louis Peraertz
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Roger Sherman